



THOMAS L. GARTHWAITE, M.D.
Director and Chief Medical Officer

FRED LEAF
Chief Operating Officer

COUNTY OF LOS ANGELES
DEPARTMENT OF HEALTH SERVICES
313 N. Figueroa, Los Angeles, CA 90012
(213) 240-8101

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June 21, 2004

TO: Each Supervisor

FROM: Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

Jonathan E. Fielding, M.D., M.P.H.
Director of Public Health and Health Officer

SUBJECT: **REGULATION OF COMMERCIAL SEX VENUES**

On February 3, 2004, the Board approved a motion by Supervisor Yaroslavsky, instructing the Department of Health Services and County Counsel to report to the Board with recommendations on bathhouses and other venues including: "appropriate changes in regulations and procedures related to bathhouses and similar venues; coordination between cities and the County in licensing and permitting the operation of such venues; financing, accessing, facilitating and permitting DHS's HIV/AIDS prevention and treatment efforts within these venues; and coordination of other healthcare services, such as sexually-transmitted disease (STD) testing and alcohol and drug treatment programs, with HIV/AIDS prevention and treatment efforts."

RECOMMENDATION

It is our recommendation that the County's Code be amended to require each Commercial Sex Venue (CSV) to obtain a public health facility permit from the Health Officer. A condition for issuance of such public health facility permit will be compliance with CSV guidelines issued by the Health Officer to prevent the spread of HIV/AIDS and other STDs in CSVs [See Attachment A, Draft Guidelines]. Since all of the CSVs currently operating in the County are located in the City of Los Angeles, enforcement of the ordinance and CSV guidelines will require the City to incorporate the ordinance into its health code.

We recommend enhanced regulation of CSVs because the evidence shows that unprotected sex occurs in these facilities, placing participants at higher risk of acquiring HIV and other STDs. The proposed guidelines are designed to reduce the amount of high risk sexual activity occurring and thus reduce the transmission of HIV and other STDs, through standardized education, testing and significantly enhanced monitoring, as well as sanctions for non-compliance with enhanced regulatory requirements.

Further, as drug and alcohol use can enhance the likelihood of unprotected sex thereby increasing the risk of infection of HIV and other STDs, we believe it is critical to minimize their use in CSVs. As such, we are considering, and will include in the guidelines, monitoring requirements aimed at reducing the use of drugs and alcohol by CSV patrons.

BACKGROUND TO MOTION

As the public health agency, we are providing recommendations based on how best to reduce the burden of preventable disease associated with unsafe sex.

CSVs are unique among commercial licensed establishments in that their clientele comes primarily to meet other individuals for sexual encounters, often without exchanging personal information such as names and HIV status. Further, a DHS-sponsored survey of patrons at two bathhouses who consented to an interview found that 11 percent among those who volunteered for testing had HIV. Of respondents, 9% reported participating in unprotected anal sex within the bathhouse. While most encounters were reported to be either low risk (oral sex) or protected by use of condoms, the frequency of unprotected anal sex suggested by DHS research remains a concern. Also, data collected from men who have sex with men (MSMs) with syphilis in recent years, showed that bathhouses and sex clubs were among the most frequent venues named as places where these MSMs meet men for sex.

The incidence of HIV in these establishments continues to be unacceptably high. As part of comprehensive efforts to control this epidemic, as well as reduce the rate of many other sexually transmitted diseases, it is necessary to regulate the CSVs to minimize disease transmission. While some CSVs have undertaken significant efforts to reduce high risk sexual encounters, more needs to be done and systematic risk reduction actions need to be uniformly required and enforced at all CSVs.

One contributing factor to the transmission of HIV and other STDs is drug and alcohol use. There are reports of increased drug use associated with anonymous sexual encounters. Use of drugs and alcohol can release inhibitions about having unprotected sex with new acquaintances, increase desire for sexual activity, increase male sexual performance and even contribute to temporary memory loss. There are indications that there has been a particularly large increase in the use of crystal methamphetamine associated with sexual activity. In addition, most CSVs sell "poppers," amyl or butyl nitrate, drugs which reduce inhibitions and relax muscles. Given the effects of drug and alcohol use, we believe that regulation of CSVs must include efforts to minimize the use of those substances. In finalizing the draft guidelines, we will continue to work with County Counsel on this issue, with the goal of regulating the distribution and use of these substances to the extent legally permissible.

BACKGROUND TO REGULATION OF CSVs IN LOS ANGELES COUNTY

In 1988, the Board approved an ordinance which governs bathhouses and similar commercial establishments. It provides that any establishment which permits any restricted activity (defined as anal or vaginal intercourse or oral copulation) is a public nuisance. A 1992 settlement of a County lawsuit against two establishments provided for a bathhouse protocol, which prohibited anal intercourse without a condom and required the two clubs to work with community-based organizations (CBOs) to provide health education in the facilities. The health education included safer sex materials, condoms, training for bathhouse employees and signage. The settlement only applied to two facilities, one of which is now closed. The agreement did not include any specific penalties for non-compliance.

Since that time, DHS Public Health Investigators (PHIs) have conducted periodic inspections of bathhouses, during day-time hours, with requirements and inspection guidelines modeled on the settlement agreement. Because the inspections, although unannounced, are conducted by identifiable inspectors and occur during the day, it is very unlikely that prohibited behavior would be observed. Thus, inspections have primarily focused on health education requirements.

Types of Establishments

There are nine bathhouses and two sex clubs known to operate in the County. All of these are within the City of Los Angeles. Owners of the eleven facilities in Los Angeles have estimated a total of 50,000 admissions per month into the facilities.

Bathhouses and sex clubs are both establishments which charge an entry fee with a primary purpose of allowing or facilitating patrons to engage in sexual contact on the premises. The primary difference between the two types of facilities is that bathhouses usually have some combination of steamrooms, saunas, swimming pools, or exercise equipment, and will rent rooms or lockers for specified time periods. Patrons of these facilities generally disrobe and are provided with towels to wrap around them as they move throughout the facility. Men who frequent sex clubs may be provided with lockers for valuables, but generally retain their clothing. Cubicles which may be temporarily locked to provide partial privacy exist, but are not rented to patrons. Owners of sex clubs indicate that the primary sexual activity in the club is oral sex, but anal sex does occur.

Recent Collaborative Efforts

As part of the response to the MSM syphilis outbreak, the Board approved a contract recommended by DHS, with AIDS Project Los Angeles (APLA), for APLA to serve as a liaison between DHS and the owners of CSVs. This contract resulted in a number of meetings between DHS staff and CSV owners/managers, to discuss HIV/STD prevention in the CSVs.

The Office of AIDS Programs and Policy (OAPP) has funded several CBOs to provide HIV testing in CSVs and other venues of high-risk sex and has funded APLA to implement peer HIV risk reduction interventions in two venues. Several CBOs have provided testing in CSVs, in space provided by the owners/managers.

APPROACH AND PROCESS FOR RESPONDING TO BOARD MOTION

To respond to the Board motion, DHS analyzed the issues of transmission of HIV and other STDs from a public health perspective. The primary goal is to prevent the spread of HIV and other STDs, both among CSV patrons and also in the larger community.

In developing this response, the Department implemented a process which included

- involvement by multiple Public Health units, including the STD Program, OAPP, the Alcohol and Drug Program Administration (ADPA), and the HIV Epidemiology Program.
- a meeting with HIV community prevention providers and researchers,
- a meeting with the CSV owners, at which the owners provided proposed guidelines which they would be willing to follow,
- preliminary meetings with the City of Los Angeles AIDS Coordinator,
- a review of literature and studies which have addressed this issue,
- contacts with other cities (New York and San Francisco), to determine the status of regulation in those locales,
- contacts with the federal Centers for Disease Control and Prevention (CDC) and the State of California, and
- tours of several facilities to understand the physical layout, the types of activity which may occur, and the types of prevention programs/policies already in place.

Efforts Taken In Other Jurisdictions

Staff reviewed published reports about the experience of other cities (specifically New York and San Francisco) and spoke with health department staff from both jurisdictions. In San Francisco, the publicized closure of the bathhouses in the mid 1980's resulted in the development of sex clubs, without private rooms. There are currently 7 sex clubs in the city, some of which have steamrooms, showers, or jacuzzis. There are no local regulations or ordinances related to sex clubs but there are recommended standards that were developed in 1991 by a coalition of HIVAIDS and STD educators and operators of sex establishments. The health department has two staff that visit the sex clubs monthly to assess compliance with these standards. They provide feedback to each club on their findings and encourage compliance when violations are

identified. They have no process for taking additional action with establishments that do not comply with the voluntary guidelines.

New York City health department staff indicated that, although New York state code prohibits sex in commercial establishments, there are as many as 30 sex clubs in New York City. The city has a small inspection program, with volunteer city staff who anonymously visit establishments to see if sexual activity is occurring. If documented, the health department notifies the owner with a warning letter. Subsequent or continued violations may lead to closure. However, staff indicated that the volunteer inspectors may not be able to gain entry to many establishments, because of admission fees or other entry requirements.

PUBLIC HEALTH POLICY RECOMMENDATION

Recommended Ordinance

By July 20, 2004, we will complete the development of the CSV guidelines and file a proposed ordinance, for the Board's agenda. The proposed ordinance will require CSVs to obtain a public health facility permit to operate. The owners of CSVs will be unable to obtain a public health facility permit until they are in compliance with the CSV guidelines. The CSV guidelines will define specific responsibilities on CSVs which are designed to help prevent the spread of HIV/AIDS and other sexually transmitted disease in these establishments. The guidelines will be issued by the Health Officer and may be amended from time to time based on new public health findings. If the CSVs are not in compliance with the guidelines, the Health Officer may initiate sanctions and corrective actions, including suspension or ultimately revocation of the permit, requiring the CSV to cease operation, depending upon the nature, frequency and extent of the infractions identified. This methodology is more proactive than the current ordinance, which requires the County to go to court and seek an injunction to suspend operations by having the court make a finding that a CSV is a nuisance.

Proposed Guidelines

Attachment A contains the draft guidelines for the CSVs. By the time the ordinance is filed, DHS staff will finalize the specific details of such sections as monitoring of alcohol and drug use, signage, lighting, and informed consent. As indicated above, once the guidelines are promulgated, they can be reviewed and amended by the Health Officer periodically, based on new information or based on feedback from the inspectors.

Enforcement

We plan to enforce the guidelines through 1) inspections by staff from DHS who volunteer for this assignment, 2) information collected by monitors hired by a community agency, and 3) if necessary, unscheduled and unannounced inspections by other representatives of DHS.

Permit Fee

A permit fee will be charged to each CSV. The permit fee will cover the projected costs of enforcement and administration of this program. In addition to the permit fee, the CSVs will incur costs to comply with the guidelines.

Action Required by Jurisdictions with CSVs

The ordinance's requirements for the public health facility permit, and the underlying CSV guidelines, will only be operative in those cities which adopt the ordinance. DHS staff have already had preliminary discussions of the proposed ordinance and guidelines with Los Angeles City staff and will continue to work with them in finalizing the guidelines. If the Board adopts the proposed ordinance, DHS will recommend that the Board authorize the Director of Health Services to send letters to the appropriate City officials, urging adoption of the ordinance.

We will work with County Counsel to file the ordinance by July 30, 2004, for your approval. In the meantime, if you have any questions, please let us know.

TLG:JEF
402:009

Attachment

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors

ATTACHMENT A

COMMERCIAL SEX VENUE DRAFT GUIDELINES

1 PROHIBITED BEHAVIOR

Unprotected anal and vaginal intercourse is prohibited in CSVs. Unprotected oral intercourse is discouraged in CSV's. The following guidelines must be implemented by CSVs to assure this policy.

2. SIGNAGE

The Health Officer will promulgate the specific content, size, and location for signage in the facilities.

Locations where signs must be posted, include but are not limited to, the entry/check-in area of each facility, at entrances to and inside restrooms, in private rooms, stalls, and lounges.

The content of signs, to be specified by the Health Officer, will include, but not be limited to:

- personal responsibility of each patron regarding safe sex,

- prohibition of high-risk behavior, defined as unprotected anal and vaginal intercourse, within the facility,

- statements about the risk of unprotected sex for HIV and other STDs,

- statements that engaging in any sexual behavior, with or without a latex barrier, may still result in HIV or other sexually transmitted disease infection that can lead to chronic infection,

- the availability of condoms and lubricant, HIV/STD screening and health education,

- the use of alcohol and illegal drugs is not permitted,

- encouragement of disclosure of HIV status among patrons, and

- the penalties for non-compliance with these policies.

3. INFORMED CONSENT TO CSV RULES

The Health Officer will develop and promulgate a written form, which includes a statement of CSV rules. The CSV must provide the form to each patron upon entry, explain the CSV rules and the services provided by the CSV and require the patron to sign a copy of the form. The written form (in English and Spanish) will include a description of prohibited sexual behaviors, prohibited alcohol and drug use, the risks of unprotected sexual behaviors, the penalties for violations, the availability of HIV/STD screening and health education services and the availability of condoms and lubricants. CSV staff must ask each entrant if he/she understands the rules and available services, prior to signature. No entrant will be admitted without signing the form.

4. MONITORING

CSV staff must monitor the CSV regularly (at least hourly) to observe patron behavior and enforce CSV guidelines. The CSV must maintain a log of CSV staff monitoring, including date, time, areas monitored, prohibited behaviors observed, and actions taken.

5. CONDOMS AND LUBRICANT

CSVs must provide latex condoms and water-based lubricant (nonoxynol-9-free) to each patron upon entry, as part of an entry packet, and must provide a sufficient quantity of condoms and lubricant throughout the facility at key points, including entrances to restrooms, private rooms, stalls and lounges. Condoms must meet minimum quality specifications as determined by DHS.

6. HIV/STD SCREENING AND HEALTH EDUCATION

Each CSV must provide an area within the CSV, approved by DHS, convenient to all patrons, from which HIV/STD screening and health education is provided, at least 20 hours per week, during peak hours of club usage. It is the responsibility of the CSV to offer, at its expense for the personnel involved, through contractual arrangements with DHS certified agencies, HIV/STD testing/screening by State certified counselors (who, ideally, are also certified phlebotomists) within the CSV, and to offer health education. The Office of AIDS Programs and Policy (OAPP) and the STD Control Program will provide the appropriate test kits for HIV and selected STD screening; arrange for Public Health Laboratory testing of specimens and courier service, as needed; and offer technical assistance to CSVs on their screening and health education programs for HIV and STDs. The HIV and STD screening tests used will be periodically reviewed and may change from time to time. The requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all other confidentiality laws must be met.

7. HEALTH CARDS

Each patron must be given, upon entrance, a palm-sized card with the CSV rules, and notice of the availability of condoms, lubricant, and HIV/STD screening and health education and other materials, which describe health services available and service referral telephone numbers.

8. CONTROL OF ALCOHOL AND ILLEGAL DRUGS

CSVs must include within their signage and rules, that use of alcohol and illegal drugs within the facility is prohibited and that persons suspected of being under the influence of or consuming these substances will not be admitted or expelled immediately.

CSV staff must have training in alcohol and illegal drugs, including recognizing the signs of persons who may be under the influence of these substances.

Staff must assess patrons seeking entrance to assure that patrons clearly under the influence of drugs and alcohol are not admitted.

Staff must monitor the CSV regularly (at least hourly) to determine that prohibited consumption of alcohol and drugs is not occurring.

The CSV staff must monitor the CSV for and promptly eject persons suspected of selling or distributing alcohol or drugs.

The CSV must take steps to assure that prohibited substances are not brought into the facility.

Staff in the HIV/STD screening and health education room, must provide referral to community treatment centers for drug and alcohol treatment.

9. SANCTIONS FOR PATRONS VIOLATING RULES

The CSV must post the sanctions for violation of the rules and include a statement of these violations in its informed consent. Persons who sell prohibited substances must be permanently expelled. Persons who engage in unprotected anal or vaginal sex and/or who use or are under the influence of prohibited substances must be expelled and prohibited reentry for a period of no less than six months. CSVs shall maintain records of each individual who has been ejected for prohibited behavior and have a system for excluding those individuals from entering.

10. PHYSICAL STRUCTURE OF CSVs

Lighting throughout the facility must be sufficient for staff or inspectors to detect prohibited behaviors and for signage to be readable.

11 STAFF TRAINING

CSVs must assure that staff are trained in recognizing the effects and risks of alcohol and other drugs and HIV/STD prevention. Training must also be provided on the CSV guidelines for all staff, including monitoring and enforcement of the CSV guidelines.

12. ENFORCEMENT OF GUIDELINES

DHS will send Public Health representatives to conduct unannounced inspections of CSVs quarterly, including review of the CSV monitoring log.

DHS will contract with a community agency to hire community monitors to visit CSVs and provide reports on compliance with CSV guidelines.

DHS will arrange for unannounced and unscheduled inspections by other DHS representatives, as needed, based on the information provided by the Public Health staff and the community monitors.